

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MESHA GERKEN, BRENDAN STARKEY
and HEATHER STARKEY,

Plaintiffs,

v.

Cause No. 1:19-cv-00860-LF-SCY

DOMENIC CHARLES MILES and
PROGRESSIVE DIRECT INSURANCE COMPANY,
d/b/a PROGRESSIVE NORTHERN INSURANCE COMPANY,

Defendants.

DEFENDANT CHARLES MILES' MOTION TO CONSOLIDATE

COME NOW, Defendant, DOMENIC CHARLES MILES by and through his attorneys, **DEGRAAUW LAW FIRM, P.C.** (J. Andrew deGraauw and Bryan M. Rowland), pursuant to Fed. R. Civ. P. 42(a), and respectfully requests this Court to consolidate Plaintiffs' and Third-Party Plaintiffs' Complaint and Third-Party Complaint, respectively. In Support of consolidation, Defendant states as follows:

1. On October 12, 2015, Plaintiff MESHA GERKEN was the driver and Plaintiffs BRENDAN STARKEY and HEATHER STARKEY were passengers in a vehicle and were allegedly involved in a road rage incident with Defendant DOMENIC CHARLES MILES that resulted in alleged physical assaults and a motor vehicle collision between MESHA GERKEN and DOMENIC CHARLES MILES.

2. On October 11, 2018, Plaintiff MESHA GERKEN filed a Complaint for Monies Due in Subrogation and Punitive Damages in the Second Judicial District Court, County of Bernalillo, New Mexico and against Defendant DOMENIC CHARLES MILES, followed by a

July 9, 2018 filing by Plaintiffs MESHA L. GERKEN, BRENDAN STARKEY, and HEATHER STARKEY of a Verified First Amended Complaint against Defendants DOMENIC CHARLES MILES and PROGRESSIVE DIRECT INSURANCE COMPANY. See *Mesha L. Gerken, Brendan Starkey, and Heather Starkey, Plaintiffs vs. Domenic Charles Miles and Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Defendants*, Second Judicial District Court, County of Bernalillo, New Mexico; **Cause No. 202-CV-2018-07455**.

3. Plaintiffs MESHA L. GERKEN, BRENDAN STARKEY, and HEATHER STARKEY claim as a direct and proximate result of the negligence, battery, intentional infliction of emotional distress, and fraud of Defendant DOMENIC CHARLES MILES, the Plaintiffs sustained general damages including, but not limited to medical bills and expenses, property damage, pain and suffering, emotional trauma, loss of enjoyment of life, loss of household services, lost wages, and other damages to be proven at trial.

4. On September 18, 2019, Defendant DOMENIC CHARLES MILES filed a Notice of Removal of Plaintiffs' Verified First Amended Complaint to the United States District Court for the District of New Mexico.

5. On May 10, 2018, Plaintiff PROGRESSIVE DIRECT INSURANCE COMPANY D/B/A PROGRESSIVE NORTHERN INSURANCE COMPANY filed a Complaint for Money Due in Subrogation in the Second Judicial District Court, County of Bernalillo, New Mexico **Cause No. 202-CV-2018-03651** and against Defendant MESHA L. GERKEN, followed by a First Amended Complaint for Money Due in Subrogation filed by Plaintiff on July 5, 2019 against Defendant.

6. On July 11, 2018, MESHA L. GERKEN filed an Answer and Counter-Claim Against Plaintiff, followed by a July 7, 2019 Amended Answer and Counter-Complaint against

Plaintiff and Third-Party Complaint by Third-Party Plaintiffs MESHA L. GERKEN, BRENDAN STARKEY and HEATHER STARKEY against Third-Party Defendants DOMENIC CHARLES MILES and PROGRESSIVE DIRECT INSURANCE COMPANY D/B/A PROGRESSIVE NORTHERN INSURANCE COMPANY. See *Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Plaintiff vs. Mesha L. Gerken, Defendant and Mesha L. Gerken, Counter Plaintiff vs. Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Counter Defendant and Mesha L. Gerken, Brendan Starkey, and Heather Starkey, Third-Party Plaintiffs vs. Domenic Charles Miles and Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Third-Party Defendants*, Second Judicial District Court, County of Bernalillo, New Mexico; **Cause No. 202-CV-2018-03651**.

7. Third-Party Plaintiff's MESHA L. GERKEN, BRENDAN STARKEY, and HEATHER STARKEY claim as a direct and proximate result of the negligence, battery, intentional infliction of emotional distress, and fraud of Third-Party Defendant DOMENIC CHARLES MILES, the Plaintiffs sustained general damages including, but not limited to medical bills and expenses, property damage, pain and suffering, emotional trauma, loss of enjoyment of life, loss of household services, lost wages, and other damages to be proven at trial.

8. On September 18, 2019, Third-Party Defendant DOMENIC CHARLES MILES filed a Notice of Removal of Third-Party Plaintiffs' Third-Party Complaint to the United States District Court for the District of New Mexico. See *Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Plaintiff vs. Mesha L. Gerken, Defendant and Mesha L. Gerken, Counter Plaintiff vs. Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Counter Defendant and Mesha L. Gerken, Brendan Starkey, and*

Heather Starkey, Third-Party Plaintiffs vs. Domenic Charles Miles and Progressive Direct Insurance Company, d/b/a Progressive Northern Insurance Company, Third-Party Defendants, In the United States District Court for the District of New Mexico; **Cause No. 1:19-cv-00864**.

9. There are common questions of law and fact in the two cases.

10. All basic issues arise from the same transaction between Plaintiffs MESHA L. GERKEN, BRENDAN STARKEY, and HEATHER STARKEY and Defendant DOMENIC CHARLES MILES.

11. Plaintiffs and Third-Party Plaintiffs, MESHA L. GERKEN, BRENDAN STARKEY and HEATHER STARKEY, share the same attorney.

12. Consolidation of these two cases avoids multiplicity of suits amongst the same parties regarding identical facts and issues, thereby promoting judicial economy by avoiding two jury trials.

WHEREFORE, Defendant DOMENIC CHARLES MILES respectfully request this court to enter and Order, in the form attached hereto as Exhibit A, consolidating the two cases as described above and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

DEGRAAUW LAW FIRM, P.C.

By: /s/ **Bryan M. Rowland**

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2019, I filed the foregoing pleading electronically through the tyler tech system, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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/s/ **Bryan M. Rowland**

J. Andrew deGraauw
Bryan M. Rowland